

Jamie S. Fields
555 Brush #2409
Detroit, Mich. 48226
313-570-3906
jeansartre@msn.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re

City of Detroit,

Debtor,

William Ochadleus, *et. al.*

Appellants

Chapter 9

Case No.: 13-53846

Hon. Steven W. Rhodes

MOTION FOR LIMITED STAY PENDING APPEAL

The Ochadleus Appellants file this motion ("Motion"), pursuant to Federal Rule of Bankruptcy Procedure 8005, 9013 and 9014 for a limited stay pending appeal of this Court's Order (Doc. 8272) Confirming the City's Eighth Plan of Adjustment (Doc. 8045) entered November 12, 2014. A statement of concurrence was sought of the opposing counsel to this Motion in an email on November 18, 2014, to the attorney of record Ms. Heather Lenox and the City responded that they do not concur to this Motion.



EXHIBIT 1

Jamie S. Fields
555 Brush #2409
Detroit, Mich. 48226
313-570-3906
jeansartre@mn.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

City of Detroit,

Debtor,

William Ochadleus, *et. al.*

Appellants

Chapter 9

Case No.: Case No. 13-53846

Hon. Steven W. Rhodes

ORDER

For the reasons stated in the Motion for Limited Stay Pending Appeal filed this date, the Court directs the following:

1. The Motion for Limited Stay Pending Appeal is GRANTED.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan

In re: City of Detroit

Chapter: 9

[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]

Case No.: 13-53846

Debtor(s)

Judge: Steven W. Rhodes

Address 2 Woodward Ave. Suite 1126
Detroit, Michigan 48226

Last four digits of Social Security or

Employer's Tax Identification (EIN) No(s) (if any): _____

NOTICE OF: Motion for Limited Stay Pending of Order (Doc. 8272) Confirming Eighth Plan of Adjustment of the City of Detroit's Debts (Doc. 8045)

(Motion or Objection)

Jamie S. Fields has filed papers with the court to Provide Limited Stay of Confirmation Order (Stay all Plan changes proposed for retiree pension benefits).

{relief sought in motion or objection}

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in a motion or objection], or if you want the court to consider your views on the [motion] [objection], within 21 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at: ¹

United States Bankruptcy Court
(Mail to correct Court Address
Detroit, Flint or Bay City)

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:
{movant's attorney's name, address and telephone number}
{name and addresses of others to be served}

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: 11/18/14

Signature /s/ Jamie S. Fields
Name Jamie S. Fields (P52808)
Address 555 Brush 2409
Detroit, Michigan 48226
313-570-3906
jeansartre@msn.com

EXHIBIT 3

Jamie S. Fields
555 Brush #2409
Detroit, Mich. 48226
313-570-3906
jeansartre@mn.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

City of Detroit,

Debtor,

William Ochadleus, *et. al.*

Appellants

Chapter 9

Case No.: Case No. 13-53846

Hon. Steven W. Rhodes

BRIEF IN SUPPORT OF MOTION FOR LIMITED STAY PENDING APPEAL

Jurisdiction

1. The Appellants bring this motion pursuant to Rule 8005, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. A determination of whether to grant a limited stay pending appeal is a core proceeding pursuant to 28 U.S.C. § 157. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

2. The Appellants seek entry of an order, substantially in the form attached hereto as Exhibit 1, staying the confirmation of the City's Plan Order pending appeal.

Basis for Relief Requested

3. Courts consider the same elements applicable to the grant of a preliminary injunction when determining whether a stay pending appeal should be granted under Bankruptcy Rule 8005, "(1) whether the movant has shown a strong or substantial likelihood of success on the merits; (2) whether the movant has demonstrated irreparable injury; (3) whether the issuance of [a stay] would cause substantial harm to others; and (4) whether the public interest is served by the issuance of [a stay]." *In re Holstine*, 458 B.R. 392, 394 (E.D. Mich. 2011) citing *In re Eagle-Picher Indus.*, 963 F.2d 855, 858-69 (6th Cir. 1992).
4. The Sixth Circuit has adopted a sliding scale with respect to the first two factors. "The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury [movants] will suffer absent the stay. Simply stated, more of one excuses less of the other." *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir.1991); see also *Service Employees Intern. Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (quoting *Griepentrog*); *In re Smith*, 501 B.R. 332, 335-36 (Bankr. E.D. Mich. 2013) (same). Consistent with this sliding scale approach, the Sixth Circuit has approved a test that provides that a stay is appropriate "where [the movant] fails to show a strong or substantial probability of ultimate success on the merits of his claim, but where he at least shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the [non-moving party] if [a stay] is issued." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th

Cir. 1985) (citations omitted); *see also Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009) (affirming that an injunction may issue upon a showing of “serious questions going to the merits”).

Likelihood of Success on the Merits.

5. The risk of statutory and/or equitable mootness with respect to several issues subject to appeal strongly supports a stay. *See, e.g., In re Adelpia Commc’n Corp.*, 361 B.R. 337, 347-48 (S.D.N.Y. 2007) (“[W]here the denial of a stay pending appeal risks mootting *any* appeal of *significant* claims of error, the irreparable harm requirement is satisfied”) (emphasis in original); *see also Weingarten Nostat, Inc. v. Service Merchandise Co., Inc.*, 396 F.3d 737, 741 (6th Cr. 2005) (noting that the district court below determined that potential mootness of appeal likely established irreparable harm even though the district court denied the stay on other grounds).
6. To be clear, Appellants do not concede that its appeal will be moot. Indeed, the Appellants believe that some relief may be possible notwithstanding the Confirmation Order, and also believe that equitable mootness would be inapplicable here. In particular, the Appellants believe that if the reductions to retiree pensions is overturned on appeal, the City would not be required to spend any additional monies (the City under terms of the Plan is not required to spend any monies from its general fund to its retirement system until 2023 and current benefits are paid from the retirement trusts). And the City cannot show with any certainty the retirement systems future funding needs (post 2023).
7. The Court has stated that it believed that the chances of an appeal succeeding was at 25%. Currently, the favorite team to win the 2015 Super-bowl (Denver Broncos) have 4 to 1 (20%) odds to win the Superbowl. Therefore, there is a reasonable likelihood of prevailing

on the merits. The moving party “need not satisfy all elements, but rather the Court is to balance the factors.” *In re Seidel*, 443 B.R. 411, 413 (Bankr. S.D. Ohio 2011) (“All four factors are not prerequisites but must be balanced”). In essence, a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal.

Debtors Will Not Be Substantially Harmed By the Relief Sought

8. In contrast to the substantial irreparable harm that the City of Detroit retirees will suffer absent a stay, the Debtors will suffer no harm.
9. Retirees received their annual Cost of Living Adjustment (COLA) on July 1, 2014. Since the Plan was approved the City has the right to “recoup” 55% of retiree’s COLA’s retroactively to July 1, 2014 (the farther out the effective date is extended the more “recoupment” retirees will suffer and the greater the harm). This will cause substantial harm to many retirees that rely on already meager pensions for sustenance.

The Appeal Presents Substantial Issues of Significant Public Interest

10. All courts who have weighed in to date recognize that the issues here are of great public significance and are substantial. The bankruptcy court also recognized the significant public interest at play in this unprecedented case.
11. Thus, the dispute is not over whether the issues presented affect the public interest but rather whether the Debtors should be allowed to avoid any meaningful appellate review of the unprecedented posture of the State and the City in this matter.

/s/ Jamie S. Fields

Jamie S. Fields (P52808)
555 Brush, 2409, Detroit, MI 48226
(313) 570-3906
jeansartre@msn.com

Respectfully Submitted:
November 18, 2014

EXHIBIT 4

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2014, I electronically filed a *Motion for Limited Stay Pending Appeal* and *Proposed Order Granting Stay Pending Appeal* on the City of Detroit with the Clerk of the Court for the United States Bankruptcy Court, Eastern District of Michigan, Southern Division using the ECF System, which will send notification of such filing to all attorneys and parties of record registered electronically, including the following listed parties.

/s/Jamie S. Fields

Jamie S. Fields (P-52808)

555 Brush #2409

(313) 570-3906

Detroit, Michigan 48226

jeansartre@msn.com

City of Detroit represented by:

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

dgheiman@jonesday.com

hlennox@jonesday.com

Bruce Bennett (CA 105430)

JONES DAY

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 243-2382

Facsimile: (213) 243-2539

bbennett@jonesday.com

Thomas F. Cullen, Jr. (DC 224733)

Gregory M. Shumaker (DC 416537)

Geoffrey S. Stewart (DC 287979)

JONES DAY

51 Louisiana Ave., N.W.

Washington, D.C. 20001

Telephone: (202) 879-3939

Facsimile: (202) 626-1700

tfcullen@jonesday.com

gshumaker@jonesday.com

gstewart@jonesday.com

Robert S. Hertzberg (P30261)

Deborah Kovsky-Apap (P68258)

PEPPER HAMILTON LLP

4000 Town Center, Suite 1800

Southfield, MI 48075

Telephone: (248) 359-7300

Facsimile: (248) 359-7700

hertzbergr@pepperlaw.com

kovskyd@pepperlaw.com

Retired Detroit Police Members Association
Represented by:

STROBL & SHARP, P.C.
Lynn M. Brimer (P43291)
Meredith E. Taunt (P69698)
Mallory A. Field (P75289)
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304
Telephone: (248)540-2300
Facsimile: (248) 645-2690
lbrimer@stroblpc.com
mtaunt@stroblpc.com
mfield@stroblpc.com

The Police and Fire Retirement System of the City of Detroit The
General Retirement System of the City of Detroit
Represented by:

CLARK HILL PLC
Robert D. Gordon (P48627)
Shannon L. Deeby (P60242)
Jennifer K. Green (P690 19)
Evan J. Feldman (P73437)
151 South Old Woodward Avenue, Suite 200
Birmingham, Michigan 48009
Telephone: (248) 988-5882
Facsimile: (248) 988-2502
rgordon@clarkhill.com

ARNOLD & PORTER LLP Lisa
Hill Penning 777 South Figueroa
Street 44th Floor
Los Angeles, California 90017
Telephone: (213)243-4000
Facsimile: (213) 243-4199
lisa.fenning@aporter.com

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Jonathan S. Green (MI P33 140)

Stephen S. LaPlante (MI P48063)

150 West Jefferson Suite 2500

Detroit, Michigan 48226

Telephone: (313) 963-6420

Facsimile: (313) 496-7500

green@millercanfield.com

laplante@millercanfield.com

The Detroit Fire Fighters Association

The Detroit Police Officers Association

The Detroit Police Lieutenants & Sergeants Association

The Detroit Police Command Officers Association

Represented by:

ERMAN, TEICHER, MILLER, ZUCKER & FREEDMAN, P.C.

Earle I. Erman (P24296)

Craig E. Zucker (P39907)

Barbara A. Patek (P34666)

400 Galleria Office Centre, Suite 444

Southfield, MI 48034

Telephone: (249) 827-4100

Facsimile: (248) 827-4106

bpatek@ermanteicher.com

International Union of Operating Engineers, Local 324

Represented by:

SACHS WALDMAN, P.C.

Andrew Nickelhoff (P37990).

Mami Kato (P74237)

221 1 East Jefferson Avenue, Suite 200

Detroit, MI 48207

Telephone: (313)496-9429

Facsimile: (313)965-4602

anickelhoff@sachswaldman.com

mkato@sachswaldman.com

Service Employees International Union, Local 517M

Represented by:

SACHS WALDMAN, P.C.

Andrew Nickelhoff (P37990)

Mami Kato (P74237)

221 1 East Jefferson Avenue, Suite 200

Detroit, MI 48207

Telephone: (313)496-9429

Facsimile: (313)965-4602

anickelhoff@sachswaldman.com

mkato@sachswaldman.com

David Sole

Represented by:

JEROME D. GOLDBERG, PLLC

Jerome D. Goldberg (P61678)

2921 East Jefferson, Suite 205

Detroit, MI 48207

Telephone: (313)393-6001

Facsimile: (313)393-6007

apclawyer@sbcglobal.net

The Retired Detroit Police & Fire Fighters Association

Donald Taylor, individually and as President of the Retired Detroit Police & Fire Fighters Association

The Detroit Retired City Employees Association

Shirley V. Lightsey, individually and as President of the Detroit Retired City Employees Association

Represented by:

LIPPITT O'KEEFE, PLLC Brian D. O'Keefe

(P39603) Ryan C. Plecha (P71957) 370 East

Maple Road, 3rd Floor Birmingham, MI

48009 Telephone: (248) 646-8292

rplecha@lippittokeefe.com

SILVERMAN & MORRIS, P.L.L.C.

Thomas R. Morris (P39141)

30500 Northwestern Highway, Suite 200

Farmington Hills, MI 48334

(248) 539-1330

morris@silvermanmorris.com

Robbie Flowers
Michael Wells Janet
Whitson Mary
Washington Bruce
Goldman
Represented by:

William A. Wertheimer (P26275)
30515 Timberbrook Lane
Bingham Farms, MI 48025
Telephone: (248) 644-9200

Michigan Council 25 of the American Federation of State, County & Municipal
Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (AFSCME)
Represented by:

LOWENSTEIN SANDLER LLP
Sharon L. Levine, Esq.
Wojciech F. Jung, Esq.
Philip J. Gross, Esq.
65 Livingston Avenue
Roseland, NJ 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-6247
slevine@lowenstein.com
wjung@lowenstein.com
pgross@lowenstein.com

THE SANDERS LAW FIRM PC
Herbert A. Sanders, Esq. 615 Griswold
St., Suite 913 Detroit, MI 48226
Telephone: (313)962-0099 Facsimile:
(313)962-0044
sanders@miafscme.org

MILLER COHEN, P.L.C. Richard G. Mack, Jr.,
Esq. 600 West Lafayette Boulevard 4th Floor
Detroit, MI 48226

International Union, United Automobile, Aerospace and Agricultural Implement
Workers of America
Represented by:

COHEN, WEISS AND SIMON LLP
Babette A. Ceccotti
Keith E. Secular
Thomas N. Ciantra
Joshua J. Ellison
330 West 42nd Street
New York, NY 10036
Telephone: (212) 563-4100
Facsimile: (212) 695-5436
bceccotti@cwsny.com

Niraj R. Ganatra (P63150) Michael
Nicholson (P33421) 8000 East
Jefferson Avenue Detroit, MI 48214
Telephone: (313)926-5216
Facsimile: (313)926-5240
nganatra@uaw.net
mnicholson@uaw.net

Center for Community Justice and
Advocacy
Represented by:

VANESSA G. FLUKER, ESQ. PLLC
Vanessa G. Fluker, Esq. PLLC
2921 East Jefferson, Suite 200
Detroit, MI 48207
Telephone: (313) 393-6005
Facsimile: (313) 393-6007
vgflawyer@sbcglobal.net

The Retiree Committee of the City of Detroit
Represented by:

DENTON S US LLP
Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
carole.neville@dentons.com

DENTONS US LLP
Sam J. Alberts
1301 K Street, NW Suite 600, East Tower
Washington, DC 20005-3364
Telephone: (202) 408-6400
Facsimile: (202) 408-6399
sam.alberts@dentons.com

SALANS FMC SNR DENTON EUROPE LLP
Claude D. Montgomery (P29212)
Rockefeller Center
620 Fifth Avenue
New York, New York 10020
Telephone: (212) 632-8390
claudemontgomery@dentons.com

BROOKS WILKINS SHARKEY & TURCO PLLC
Matthew E. Wilkins (P56697)
Paula A. Hall (P61101)
401 South Old Woodward, Suite 400
Birmingham, Michigan 48009
Telephone: (248) 971-1711
Facsimile: (248) 971-1801
wilkins@bwst-law.com
hall@bwst-law.com